

NOTICE OF
PUBLIC MEETING

TO BE HELD
FRIDAY, June 3, 2016 at 12:15 p.m.

IN THE
OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

**TOPIC: GARNISHMENT LAW
AMENDMENTS**

This is a proposal to amend an existing Tribal Law which would:

- Remove the specific amount of the garnishment action fee and the administrative fee from the Law and instead the Judiciary is authorized to determine the garnishment action fee amount, while the Accounting Department determines administrative fee amount [*See 58.5-2 (a) (1) and 58.5-5 (a) (1)*]. The current Law sets the garnishment action fee at \$25.00 and the administrative fee at \$5.00.
- Limit representation to an attorney or advocate [*See 58.5-3 (d)*]. The current Law allows the parties to be represented by someone to speak on their behalf.
- Require post judgment interest be applied to the judgment amount and included in the garnishment order [*See 58.5-3 (d)*]. The post judgment interest rate is a fixed rate and will be determined by 1) an agreement by both parties or 2) an annual post judgment rate equal to one percent plus the prime rate that was in effect on the date of the judgment [*See 58.5-5 (d) (1) & (2)*].
- Oneida entities, including chartered corporations, do not require a judgment or a garnishment order to garnish an employee's earnings to collect a debt owed to the Nation [*see 58.6-1*]. Oneida entities must follow the notification procedure [*see 58.6-2*]. An employee can request a garnishment hearing with the Judiciary within 30 days of the date of the final notice to challenge the debt owed to the Nation or to request a reduced garnishment amount [*see 58.6-7*]. The debtor is responsible for the Judiciary's garnishment action fee [*see 58.6-3(b)*].

To obtain copies of the Public Meeting documents for this proposal,
or to learn about the LOC public meeting process, please visit
www.oneida-nsn.gov/Register/PublicMeetings
or contact the Legislative Reference Office.

PUBLIC COMMENT PERIOD
OPEN UNTIL June 10, 2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

Legislative Reference Office
PO Box 365 Oneida, WI 54155
LOC@oneidation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040



Chapter 58
Garnishment
Lotihwistáhkwa Olihwáke
 the matter of taking money out

Analysis Draft # 3 to Draft 5 5/4/16

<i>Analysis by the Legislative Reference Office</i>					
Title	Garnishment (law)				
Requester	Judiciary	Drafter	Krystal L. John	Analyst	Candice E. Skenandore / Maureen Perkins
Reason for Request	To determine whether or not to include interest when a garnishment is ordered.				
Purpose	The purpose of this law to exercise the authority of the Nation to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt [see 58.1-1].				
Authorized/ Affected Entities	Employees of the Nation that incur personal debt, the Accounting Department, the Judiciary (excluding the Family Court), creditors (can include Oneida entities), and a court of competent jurisdiction				
Related Legislation	Judiciary Law and Rules of Appellate Procedure. The Child Support Law and Per Capita Law have similar concepts.				
Enforcement/ Due Process	<p>The Judiciary can issue a garnishment order against a debtor [see 58.5-4].</p> <p>Oneida entities do not need a judgment or garnishment order [see 58.6-1]; however the debtor can request a garnishment hearing to contest the validity of the debt or to request a reduced garnishment amount [see 58.6-7].</p> <p>The debtor can request a reduction in the required twenty (20) percent of their disposable income with appropriate justification and documentation [see 58.5-6(c)(1)(A)].</p> <p>Garnishments will not affect current or potential employment with the Nation [see 58.8].</p> <p>Either party can appeal a decision regarding a garnishment order to the Court of Appeals [see 58.9].</p>				

Overview

This law and the Child Support law both deal with wage withholdings; however, this law sets the process for withholdings of the Nation's employees that have personal debt. This personal debt can include, but is not limited to child support orders from a court of competent jurisdiction. Child Support sets the process for child support orders made by the Family Court; those orders will not follow this law [see 58.7 and Child Support 78.9-2].

This law explains how a creditor can seek a garnishment order against an employee of the Nation for personal debt. The creditor, other than Oneida entities, must file a petition with the Judiciary and once the petition is received, the Judiciary must hold a garnishment hearing within 60 days. Within five business days of the garnishment hearing, the judge will make a final decision and notify the parties. If the judge issues a garnishment order, he/she will calculate a percentage of the debtor's disposable income that will be garnished, starting with a presumption that 20 percent of the debtor's disposable income can be garnished. However, the debtor can request a lesser percentage be garnished from his/her disposable income if the debtor meets established criteria. The debtor can also request a greater percentage be garnished. Once the garnishment order is issued, the Accounting Department will begin deducting the appropriate amount from the debtor's paycheck within ten business days of receiving a copy of the garnishment order. If the debtor owes \$50 or less, the Judge can hold a summary proceeding which does not require a formal hearing.

Oneida entities are not subject to the garnishment process requirements regarding a judgment and can garnish without going through the Judiciary unless the debtor requests a garnishment hearing. The entity owed the debt must provide two written notices of the debt to the debtor before issuing the notice to

Garnishment

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21 garnish. The notice to garnish must also appear in the Nation’s newspaper. Once this has been satisfied,
22 the Accounting Department will calculate the garnishment amount or the Nation’s entity owed debt. The
23 Accounting Department will begin deducting the appropriate amount from the debtor’s paycheck within ten
24 business days of the close of the debtor’s thirty (30) calendar day time period to resolve the debt or request
25 a garnishment hearing or enter into an alternate garnishment agreement.

26 A party can appeal the judge’s decision regarding the garnishment. An employee cannot be
27 discharged, disciplined or an applicant cannot be turned away solely because he/she is subject to a
28 garnishment action.

29 Proposed Amendments

- 30 ■ The current law sets the garnishment action fee at \$25.00 and the administrative fee at \$5.00.
- 31 These amounts have been removed from the law and instead the Judiciary is authorized to
- 32 determine the garnishment action fee amount [see 58.5-3(a)(1)], while the Accounting Department
- 33 determines administrative fee amount [see 58.5-6(a)].
- 34 ■ The current law allows the parties to be represented by someone to speak on their behalf. The
- 35 proposed amendments limit representation to an attorney or advocate [see 58.5-4(d)].
- 36 ■ A post judgment interest must be applied to the amount received on the date of the garnishment
- 37 order [see 58.5-6(d)]. The post judgment interest rate is a fixed rate and will be determined by 1)
- 38 an agreement by both parties or 2) an annual post judgment rate equal to one percent plus the
- 39 prime rate that was in effect on the date of the judgment [see 58.5-6(d)(1)&(2)].
- 40 ■ Oneida entities, including chartered corporations, do not require a judgment or a garnishment order
- 41 to garnish an employee’s earnings to collect a debt owed to the Nation [see 58.6-1]. Oneida
- 42 entities must follow the notification procedure [see 58.6-2]. An employee can request a
- 43 garnishment hearing with the Judiciary within 30 days of the date of the final notice to challenge the
- 44 debt owed to the Nation or to request a reduced garnishment amount [see 58.6-7]. The debtor is
- 45 responsible for the Judiciary’s garnishment action fee [see 58.6-3(b)(8)].

46 Considerations

- 47 The LOC may want to consider the following:
- 48 ■ This law defines Judiciary as “the judicial system that was established by . . . GTC Resolution 01-
 - 49 07-13-B to administer the judicial authorities and responsibilities of the Nation” [see 58.3-1 (o)].
 - 50 Because the Family Court was adopted pursuant to BC Resolution 05-08-13-A, it not included in
 - 51 the definition for “Judiciary” and cannot hold garnishment hearings in accordance with this law.
 - 52 This is appropriate because the Judiciary is the appropriate court to determine garnishment actions
 - 53 for the Family Court.

54 Miscellaneous

55 A public meeting was held February 18, 2016. Oneida Tribe of Indians of Wisconsin has been
56 changed to Oneida Nation to reflect approved constitutional amendments. Changes have been made
57 throughout the law to ensure compliance with drafting style. In addition, revisions have been made to
58 improve the flow and sequence of the law without changing the intended content. Please refer to the fiscal
59 impact statement for any financial impacts.

Chapter 58 Garnishment

Lotihwist@hkwa Olihw@ke
the matter of taking money out

<u>58.1. Purpose and Policy</u>	<u>58.1. Purpose and Policy</u>
<u>58.2. Adoption, Amendment, Repeal</u>	<u>58.2. Adoption, Amendment, Repeal</u>
<u>58.3. Definitions</u>	<u>58.3. Definitions</u>
<u>58.4. General</u>	<u>58.4. General</u>
<u>58.4.1. Jurisdiction. By filing a Petition, Creditors are submitting to the jurisdiction of the Tribe for the subject action.</u>	<u>58.5. Garnishment Action Procedure</u>
<u>58.5. Garnishment Action Procedure</u>	<u>58.6. Garnishment to Collect Debt Owed to the Nation</u>
<u>58.6. Recognition of Child Support Orders</u>	<u>58.7. Recognition of Child Support Orders</u>
<u>58.7. Discharge from Employment</u>	<u>58.8. Discharge from Employment</u>
	<u>58.9. Appeals</u>

58.1. Purpose and Policy

58.1-1. ~~The purpose of this Law~~ law is to exercise the authority of the ~~Oneida Tribe of Indians~~ Nation to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt.

58.1-2. ~~It is the policy of the Oneida Tribe of Indians of Wisconsin~~ Nation to afford all individuals due process.

58.2. Adoption, Amendment, Repeal

58.2-1. ~~This Law~~ law is adopted by the Oneida Business Committee by resolution # BC-4-2-97-G and amended by resolution BC-06-25-14-B and _____.

58.2-2. ~~This Law~~ law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Oneida Legislative Procedures Act.

58.2-3. ~~Should a provision of this Law~~ law or the application thereof to any person or circumstances be held as invalid, such invalidity ~~does~~ shall not affect other provisions of this ~~Law~~ law which are considered to have legal force without the invalid portions.

58.2-4. ~~In the event of a conflict between a provision of this Law~~ law and a provision of another law, the provision of this ~~Law~~ controls. law shall control.

58.2-5. ~~This Law~~ law is adopted under the authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation.

58.3. Definitions

58.3-1. ~~This Article governs~~ section shall govern the definitions of words or phrases as used herein. All words not defined herein ~~are to~~ shall be used in their ordinary and everyday sense.

(a) "Accounting Department" means ~~that department of the Tribe~~ area of the Nation charged with ~~managing the finances of~~ keeping the ~~Tribe, specifically, the office charged with responsibility for the~~ records of financial transactions and includes accounts payable and receivable, inventory, payroll of the Tribe, fixed assets and other financial elements.

(b) "Administrative Fee" means the fee assessed against the debtor each week the Accounting Department is responsible for processing the garnishment to cover the Accounting Department's costs associated with ~~enforcing~~ Garnishment Orders implementing the garnishment.

(c) "Business Day" means Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays recognized by the Nation.

36 ~~_____~~ (d) “Creditor” means anyone who is awarded a money ~~Judgment~~judgment which ~~may~~
37 ~~include a Tribal or a non Tribal entity.~~includes both the Nation’s Oneida entities and
38 outside entities. Should the ~~Tribe~~Nation be the creditor, a designee from the
39 ~~Tribal Nation’s Oneida~~ entity shall represent the claim of indebtedness.

40 (de) “Debtor” means the ~~Employee~~employee whom the ~~Judgment~~judgment has been
41 awarded against and/or whom owes a debt to the Nation.

42 (ef) “Disposable Earnings” means the part of the ~~Debtor’s~~debtor’s gross ~~Earnings~~earnings
43 for a pay period remaining after deductions required by state and federal law and for
44 health insurance costs which is presumed to be thirty percent (30%) of the debtor’s gross
45 earnings.

46 (fg) “Earnings” means compensation payable in exchange for personal services and
47 includes, but is not limited to, wages, salaries, bonuses, commissions, expense
48 reimbursements, trade-back-for-cash benefits and/or final paychecks involving pay-out of
49 benefits.

50 (gh) “Employee” means any individual hired by the ~~Tribe~~Nation and on the
51 ~~Tribe’s Nation’s~~ payroll and encompasses all forms of employment, including but not
52 limited to, full-time, part-time, at-will, elected/appointed officials, political appointees
53 and contracted persons.

54 (hi) “Garnishment” means the legal process in which the ~~Earnings~~earnings of the ~~Debtor~~
55 ~~is~~debtor are required to be withheld by the ~~Tribe~~Nation for a payment of a ~~money~~
56 ~~judgement~~debt.

57 (ij) “Garnishment Action Fee” means the fee paid to the Judiciary to cover the
58 administrative costs incurred during the ~~Garnishment~~garnishment proceedings.

59 (jk) “Garnishment Hearing” means the time and location where the Judiciary hears
60 relevant evidence, determines the validity of the ~~Petition~~petition for
61 ~~Garnishment~~garnishment and identifies the amount of the ~~Garnishment Order~~garnishment
62 order, if applicable.

63 (kl) “Garnishment Order” means the order issued by the Judiciary which requires the
64 ~~Tribe~~Nation to withhold an ~~Employee’s Earnings~~employee’s earnings in order to satisfy a
65 ~~Creditor’s~~creditor’s unpaid money ~~Judgment~~judgment or a debt owed to an entity of the
66 Nation and ~~must include~~includes any fees assessed against the ~~Debtor~~debtor.

67 (lm) “Judge” means the member of the Judiciary assigned to hear the ~~Petition~~petition
68 for ~~Garnishment~~garnishment.

69 (mn) “Judgment” means any judgment, decree, or order from a court of competent
70 jurisdiction, including, but not limited to, the Judiciary, which awards money to one or
71 more parties.

72 (no) “Judiciary” means the judicial system that was established by Oneida General
73 Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and
74 responsibilities of the ~~Tribe~~Nation.

75 ~~_____~~ (p) “Nation” means the Oneida Nation.

76 ~~_____~~ (q) “Petition” means a formal written request to the Judiciary to ~~issue a Garnishment~~
77 ~~Order.~~

78 ~~_____~~ (p) “Judge” means the member of the Judiciary assigned to hear the ~~Petition for~~
79 ~~Garnishment~~a garnishment matter.

80 ~~_____~~ (q) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

81

82 **58.4. General**

83 58.4-1. ~~–~~ Jurisdiction. By filing a ~~Petition, Creditors~~petition, creditors are submitting to the
84 jurisdiction of the ~~Tribe~~Nation for the subject action.

85 58.4-2. Consumer Protection Act. This ~~Law~~law may be interpreted to allow the fullest
86 protections available to ~~Debtors~~debtors by the federal Consumer Protection Act, 16 U.S.C.
87 §1671, et seq., state laws protecting ~~Debtors~~debtors in ~~Child Support Orders~~child support orders,
88 and other federal laws.

89
90 **58.5. Garnishment Action Procedure**

91 58.5-1. ~~–~~ Applicability. ~~This section applies to the collection of all debt through the garnishment~~
92 ~~process except as provided in section 58-6.~~

93 ~~58.5-2. Judgment Required. A Creditor must obtain~~Except as provided in section 58-6, a
94 ~~Judgment before judgment is required prior to~~ filing a ~~Petition~~garnishment petition.

95 ~~58.5-3. 58.5-2. Filing Action.~~ In order to initiate a ~~Garnishment~~garnishment, the ~~Creditor~~
96 ~~must~~creditor shall file a petition with the Judiciary. The ~~Petition must identify~~creditor shall
97 ~~ensure that the petition identifies~~ the ~~Creditor~~creditor, the intended ~~Debtor~~debtor, any other
98 interested parties, the reason for the claim, the name of the court that issued the ~~Judgment~~
99 ~~and judgment~~, the amount awarded. ~~The Creditor must;~~ the creditor shall also include a copy of
100 the ~~Judgment when filing~~judgment the ~~Petition~~petition is based upon.

101 (a) The Creditor shall pay the ~~Garnishment Action Fee~~garnishment action fee before the
102 Judiciary may consider the ~~Petition~~petition complete.

103 (1) The Judiciary shall determine the amount of the ~~Garnishment Action~~
104 ~~Fee~~garnishment action fee and post notice of the fee amount at the Judiciary and
105 on the Judiciary's webpage.

106 ~~58.5-3. 4. Garnishment Hearing.~~ The Judiciary shall hold a ~~Garnishment Hearing~~
107 ~~garnishment hearing~~ within sixty (60) days of receiving the completed ~~Petition~~petition.

108 (a) The Judiciary shall provide written notice of the garnishment hearing to the ~~Creditor;~~
109 ~~Debtor~~creditor, debtor and any other interested parties within ten (10) business days of
110 receiving the completed petition.

111 (b) The ~~Debtor~~debtor may challenge the authenticity of the ~~Judgment~~judgment document
112 ~~or the debt owed to an Oneida entity~~ at the ~~Garnishment Hearing~~garnishment hearing but
113 he or she may not challenge the validity of the ~~Judgment~~judgment.

114 (c) A ~~Garnishment Hearing~~garnishment hearing may be used to resolve one (1) or more
115 ~~Petitions~~petitions for one (1) or more ~~Debtors~~debtors; however, the Judiciary shall hear
116 ~~and determine~~ each ~~Petition must be heard and determined~~petition separately.

117 (d) Throughout the ~~Garnishment~~garnishment proceedings, the parties may choose to
118 represent themselves or may be represented by an attorney or advocate. ~~All~~The Judiciary
119 ~~shall provide all~~ parties ~~shall have with~~ an equal opportunity to present evidence at the
120 ~~Garnishment Hearing~~garnishment hearing.

121 ~~58.5-4. 5. Final Decision.~~ The ~~Judge~~judge shall make the final decision regarding a
122 ~~Garnishment Order~~garnishment order within five (5) business days of the ~~Garnishment~~
123 ~~Hearing~~garnishment hearing. The ~~Judge~~judge shall provide written notice of the final decision
124 to all parties within ten (10) business days of his or her decision. If a ~~Garnishment~~
125 ~~Order~~garnishment order is issued, the ~~written notice must~~Judiciary shall include a copy of the
126 ~~Garnishment Order~~garnishment order in the written notice.

127 58.5-~~5~~-6. Garnishment Orders. Should the Judiciary issue a Garnishment
128 Order~~garnishment order~~, it ~~must~~is required to include the following:

129 (a) ~~An Administrative Fee-~~ An administrative fee which ~~must be assessed against the~~
130 Debtor each pay period until the Garnishment Order is paid in full.

131 ~~(1) The~~ Accounting Department shall determine ~~the amount of the Administrative Fee~~
132 ~~and provide with~~ notice of the fee amount provided to the Judiciary. The Judiciary shall
133 post notice of the ~~Administrative Fee~~administrative fee amount in the Judiciary and on
134 the Judiciary's webpage.

135 ~~(b) The Garnishment Action Fee which must be awarded to the Creditor.~~

136 (b) Garnishment Action Fee. If the petition is submitted by the creditor, the judiciary
137 shall include the amount of the garnishment action fee originally paid by the creditor in
138 the garnishment order to reimburse the creditor for his or her costs to enforce the
139 judgment.

140 ~~The~~ Garnishment amount~~Amount.~~ The ~~Judge~~judge shall begin with a
141 presumption that a total of twenty percent (20%) of a ~~Debtor's Disposable~~
142 debtors' disposable earnings per pay period may be subject to
143 Garnishment~~garnishment~~(s) at any one (1) time.

144 (1) In calculating the amount of the Garnishment~~garnishment~~ per pay period, the
145 Judge~~judge~~ may not include amounts garnished pursuant to child support orders
146 when calculating twenty percent (20%) of the ~~Debtor's Disposable~~
147 debtors' disposable earnings.

148 (A) The ~~Debtor~~debtor may request the Judiciary to lower the percentage
149 deducted from his or her disposable earnings if the he or she can show that
150 requiring a deduction of the maximum twenty percent (20%) would cause
151 him or her undue harm by demonstrating that one (1) or more of the
152 following apply:

153 (i) The ~~Debtor~~debtor is subject to child support orders that
154 would leave him or her with less than fifty percent (50%) of his or
155 her Earnings~~earnings~~;

156 (ii) The ~~Debtor~~debtor receives, is eligible for or, within six (6)
157 months of the date the Judiciary received the completed
158 Petition~~petition~~, received public assistance;

159 (iii) The ~~Debtor's~~debtor's household income is below the current
160 federal poverty level;

161 (iv) The Garnishment~~garnishment~~ of twenty percent (20%) of the
162 ~~Debtor's~~debtor's disposable earnings would cause the
163 ~~Debtor's~~debtor's household income to drop below the current
164 federal poverty level; or

165 (v) The Garnishment~~garnishment~~ of twenty percent (20%) of the
166 ~~Debtor's~~debtor's disposable earnings would cause the
167 ~~Debtor~~debtor undue harm for reasons not identified in this section.

168 (2) The ~~Debtor~~debtor may request a higher percentage be deducted from his or
169 her disposable earnings. ~~Such~~The debtor shall make such requests ~~must be made~~
170 directly to the Judiciary.

171 (3) Nothing in this Law~~law~~ prohibits the ~~Debtor~~debtor from making additional
172 payments to satisfy the Garnishment Order~~garnishment order~~, provided that, if a
173 Creditor~~creditor~~ receives payments from the ~~Debtor~~debtor outside of the

174 ~~Garnishment~~garnishment process, ~~he or she must~~the creditor shall provide notice
175 of said payment to the Accounting Department with a copy to the ~~Debtor~~debtor.

176 (d) *Post Judgment Interest.* ~~Post Judgment~~The Judiciary shall include in the garnishment
177 order a one (1) time post judgment interest ~~must be applied~~charge to ~~the~~judgment amount
178 ~~recovered from the date of.~~ The Judiciary shall determine the ~~Judgment until the~~
179 ~~Garnishment Order is satisfied.~~ post judgment interest rate ~~must be~~
180 ~~fixed for the duration of the Garnishment Order and is determined~~ by one (1) of the
181 following means:

182 (1) An agreement by the parties to the ~~Garnishment~~garnishment as to a fair
183 ~~annual~~ post ~~Judgment~~judgment interest rate; or

184 (2) ~~An annual~~A post ~~Judgment~~judgment interest rate equal to one percent (1%)
185 plus the prime rate in effect on the date in which the ~~Judgment~~judgment was
186 awarded or the date of the final notice of indebtedness with intent to garnish, as
187 reported by the Federal Reserve Board in federal reserve statistical release H. 15.

188 ~~58.5-6-7.~~ 58.5-7. *Notice of Garnishment to Accounting Department.* The Judiciary shall provide
189 the Accounting Department with a copy of the ~~Garnishment Order~~garnishment order after the
190 timeframe for all appeals has been exhausted.

191 ~~58.5-7.~~ 58.5-8. *Garnishment Implementation.* Within ten (10) business days of receiving
192 a copy of the ~~Garnishment Order~~garnishment order the Accounting Department shall implement
193 the ~~Garnishment~~garnishment by:

194 (a) ~~Deducting~~ deducting the appropriate amount from the ~~Debtor's~~debtor's paycheck(s)
195 and ~~forward~~forwarding that amount to the ~~Creditor~~; and

196 (b) ~~Notify~~creditor. The Accounting Department shall notify the ~~Debtor~~debtor and
197 ~~Creditor~~creditor when the ~~Garnishment Order~~garnishment order has been fulfilled.

198 ~~58.5-9.~~ 58.5-8. *Summary Process.* The Judiciary shall summarily process ~~Petitions~~petitions
199 when the ~~Debtor~~debtor owes fifty dollars (\$50) or less, unless the ~~Debtor~~debtor formally requests
200 a ~~Garnishment Hearing~~.

201 (a) ~~garnishment hearing.~~ garnishment hearing. For the purposes of this section, to summarily process a
202 ~~Petition~~petition means a ~~Judge~~judge may make a determination regarding the ~~Garnishment~~
203 ~~Order~~garnishment order without holding a ~~Garnishment Hearing~~garnishment hearing.

204 ~~58.5-9.~~ 58.5-9. *Appeals.* ~~A party may appeal the decision regarding a Garnishment Order,~~
205 ~~provided that the appeal must be submitted within ten (10) business days from the date of the~~
206 ~~notice of the Judge's determination. The appeal shall be filed with the Judiciary's Court of~~
207 ~~Appeals in accordance with the Judiciary Law and any applicable rules and procedures.~~

208 ~~58.5-10.~~ 58.5-10. *Records.* The Judiciary shall keep records of all ~~Garnishment~~garnishment
209 actions. ~~The~~ it hears and shall ensure such records ~~must contain, at minimum~~include the
210 following:

211 (a) Correspondence and notices to all parties involved;

212 (b) Bookkeeping records;

213 (c) Garnishment evidence presented by all parties; and

214 (d) Decisions made by the Judge.

215 58.5-11. Modifying a Garnishment Order. A debtor may petition the Judiciary at any time
216 following the issuance of a garnishment order to request a reduced garnishment amount if he or
217 she is able to demonstrate a change in circumstances that may justify a reduced amount as
218 provided in section 58.5-6(c)(1)(A).

219

220 **58.6. Garnishment to Collect Debt Owed to the Nation**

221 58.6-1. – No Judgment or Garnishment Order Required. Oneida~~The Nation's~~ entities, which for
222 the purposes of this section include its chartered corporations, are not subject to the garnishment
223 process requirements contained in section 58.5 unless a garnishment hearing is requested under
224 section 58.6-7. In all other circumstances, ~~the Nation's~~ Oneida entities do not require a judgment
225 or a garnishment order in order to garnish an employee's earnings to collect debt owed to the
226 Nation.

227 58.6-2. Notice of Indebtedness. Prior to initiating a garnishment, the entity owed the debt shall
228 provide written notice of indebtedness to the debtor by first (1st) class mail.

229 (a) Frequency of Notice. Entities shall send debtors notice of indebtedness for each
230 month a debt is owed with each notice being sent a minimum of thirty (30) calendar days
231 apart. Entities shall send two (2) consecutive monthly notices prior to the debt becoming
232 eligible for garnishment.

233 (b) Notice Content. Entities shall include the following in their notices of indebtedness:

234 (1) How many notices of indebtedness have been provided prior to the subject
235 notice and the dates of all prior notices;

236 (2) The amount of the debtor's indebtedness;

237 (3) Information for making payment on the debt; and

238 (4) An explanation that if the debt is not paid in full within thirty (30) calendar
239 days from the date of the second consecutive monthly notice, the entity may
240 initiate an automatic garnishment of the debtor's earnings.

241 58.6-3. Initiating a Garnishment. After thirty (30) calendar days have lapsed since the entity
242 sent the second consecutive monthly notice of indebtedness, the entity may initiate a garnishment
243 by providing the debtor with a final notice of indebtedness with intent to garnish. The entity
244 shall send the final notice to the debtor by certified mail and shall provide a copy to the
245 Accounting Department. Additionally, the entity shall post notice of intent to garnish in the
246 Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed
247 a debt and the Oneida entity's contact information for payment. The entity shall submit its
248 request to post to the newspaper at the same time the final notice with intent to garnish is mailed
249 in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days
250 before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request
251 a garnishment hearing. The entity shall include the following in the final notice of indebtedness
252 with intent to garnish:

253 (a) The dates of all prior notices of indebtedness provided to the debtor;

254 (b) The amount of the debtor's indebtedness;

255 (c) Information for making payment on the debt;

256 (d) An explanation that this is the final notice and the entity has by this final notice
257 initiated a garnishment against the debtor;

258 (e) An explanation that if the debt is not paid in full within thirty (30) calendar days from
259 the date of the final notice of indebtedness with intent to garnish that the Accounting
260 Department will automatically begin garnishing the debtor's earnings until the debt is
261 satisfied in full;

262 (f) That the garnishment amount that may be deducted from the debtor's earnings each
263 week consists of an administrative fee, the payment of the debt each to a maximum of
264 twenty percent (20%) of the debtor's disposable earnings and an interest charge; and

265 (g) An explanation that the debtor may negotiate a reduced weekly garnishment amount
266 with the entity, excluding the administrative fee which is not negotiable, and may request

267 that a higher percentage than what is required under section 58.6-4(a)(2) be deducted
268 weekly. Provided that, if an agreement is not reached and noticed to the Accounting
269 Department within thirty (30) calendar days from the date of the of the final notice of
270 indebtedness, the Accounting Department shall proceed with the garnishment amount
271 provided in the notice; and

272 (h) An explanation that the debtor may request a garnishment hearing with the Judiciary
273 to contest the validity of the debt or request a reduced garnishment amount, by submitting
274 a petition to the Judiciary within thirty (30) calendar days from the date of the of the final
275 notice of indebtedness with intent to garnish and that the debtor is responsible for the
276 Judiciary's garnishment action fee.

277 58.6-4. Accounting Department Responsibilities.

278 (a) Calculating the Garnishment Amount. The Accounting Department shall include the
279 following in its calculation of the weekly garnishment amount.

280 (1) The administrative fee to be assessed against the debtor each pay period until
281 the debt is paid in full. The Accounting Department shall use the same
282 administrative fee that is noticed in the Judiciary and on the Judiciary's website as
283 required in section 58.5-6(a).

284 (2) The amount of the garnishment attributable to payment of the debt that is
285 equal to twenty percent (20%) of the debtor's disposable earnings per pay period.

286 (A) If the Accounting Department is currently processing any other
287 garnishments for the same debtor, it shall adjust this amount so that no
288 more than twenty percent (20%) of the debtor's disposable income is
289 subject to garnishment at any one (1) time.

290 (B) In calculating the amount of the garnishment per pay period, the
291 Accounting Department may not include amounts garnished pursuant to
292 child support orders when calculating twenty percent (20%) of the
293 debtor's disposable earnings.

294 (3) Interest. The Accounting Department shall include in the garnishment
295 amount a one (1) time interest charge to the original amount of the debt. Unless
296 otherwise agreed by the creditor and the debtor, the Accounting Department shall
297 apply the interest using a rate equal to one percent (1%) plus the prime rate in
298 effect on the date of the final notice of indebtedness with intent to garnish, as
299 reported by the Federal Reserve Board in federal reserve statistical release H. 15.

300 (b) Garnishment Implementation. Within ten (10) business days of either the close of the
301 debtor's thirty (30) calendar day time period to resolve the debt or request a garnishment
302 hearing or receipt of an alternate garnishment agreement, the Accounting Department
303 shall implement the garnishment by deducting the appropriate amount from the debtor's
304 paycheck(s) and forwarding that amount to the creditor. The Accounting Department
305 shall notify the debtor and creditor when the debt has been fully satisfied and the
306 garnishment is complete.

307 (c) Records. The Accounting Department shall keep records of all garnishments
308 enforced on behalf of Oneida entities, and shall ensure that such records include the
309 following:

310 (1) Copies of all final notices with intent to garnish sent to debtors; and

311 (2) Bookkeeping records.

312 58.6-5. Negotiating an Alternate Garnishment Agreement. It is within the entities' discretion to
313 negotiate an alternate garnishment agreement that would reduce the weekly garnishment amount.

314 Such negotiations may include a reduced interest rate and/or a reduced amount of the weekly
315 garnishment attributable to payment of the debt.

316 (a) In the event of that the entity and the debtor reach an agreement, the entity shall
317 immediately forward the agreement to the Accounting Department and provide a copy to
318 the debtor.

319 (b) If an agreement is not reached and noticed to the Accounting Department within
320 thirty (30) calendar days from the date of the of the final notice of indebtedness, the
321 Accounting Department shall proceed with the garnishment amount provided in the final
322 notice with intent to garnish.

323 (c) The garnishment amount attributable to payment of the debt may be amended at any
324 time if agreed to by the entity and the debtor.

325 58.6-6. *Payments in Excess of the Required Garnishment Amount.* A debtor may at any time
326 make payments in excess of the required garnishment amount as noticed to them in the final
327 notice of indebtedness with intent to garnish.

328 (a) The debtor may request a higher percentage be deducted from his or her disposable
329 earnings. Debtors shall make such requests directly to the Accounting Department.

330 (b) Nothing in this law prohibits the debtor from making additional payments to satisfy
331 the garnishment order, provided that, if an entity receives payments from the debtor
332 outside of the garnishment process, the entity shall provide notice of said payment to the
333 Accounting Department with a copy to the debtor.

334 58.6-7. *Requesting a Garnishment Hearing.* A debtor may request a garnishment hearing with
335 the Judiciary to contest the validity of the debt or request a reduced garnishment amount by
336 submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the
337 final notice of indebtedness with intent to garnish.

338 (a) The debtor shall ensure that the petition identifies the creditor, the debtor, any other
339 interested parties, and the reason for requesting the garnishment hearing; the debtor shall
340 also include a copy of the final notice of indebtedness with intent to garnish.

341 (b) The debtor shall pay the garnishment action fee before the Judiciary may consider the
342 petition complete.

343 (c) When a request for a garnishment hearing is timely made, the garnishment process
344 contained in sections 58.5-4 through 58.5-10 controls. In such circumstances, the entity
345 is still not required to obtain a judgment, but shall receive a garnishment order prior to
346 garnishing.

347
348 **58.7. Recognition of Child Support Orders**

349 58.7-1. *Recognition and Enforcement of Child Support*~~58.6-1. *Orders for*~~ The Judiciary shall
350 recognize and enforce child support orders against any ~~Employee must be recognized and~~
351 ~~enforced~~ employee, provided that the order has been issued from a court of competent
352 jurisdiction.

353 58.67-2. *Authenticity of Order.* ~~The Judiciary must receive such~~ Parties seeking to garnish
354 based on a child support ~~orders and~~ order shall submit the order to the Judiciary, which shall
355 verify the order's authenticity ~~of such orders.~~ Upon verification of the child support order, the
356 Judge ~~judge~~ shall forward such order to the Accounting Department for action.

357 58.67-3. *Administrative Fee.* ~~An Administrative Fee must~~ An administrative fee is required to
358 be assessed monthly so long as the child support deduction is in effect.

360 **58.7-8. Discharge from Employment**

361 58.7~~8~~-1. ~~The Tribe shall~~Nation may not discharge from employment, refuse to employ or
362 otherwise take disciplinary action against an ~~Employee~~employee solely because the
363 ~~Employee~~employee is subject to a ~~Garnishment~~garnishment action.

364
365 **58.9. Appeals**

366 58.9-1. A party may appeal a garnishment action with the Judiciary's Court of Appeals in
367 accordance with the Judiciary Law and any applicable rules and procedures.

368
369
370 *End.*

371

372 Adopted - BC-6-2-92

373 Adopted - BC-6-10-92

374 Adopted - BC-4-2-97-G

375 Amended - BC-06-25-14-B

Chapter 58
Garnishment
Lotihwist@hkwa Olihw@ke
the matter of taking money out

58.1.	Purpose and Policy	58.6.	Garnishment to Collect Debt Owed to the Nation
58.2.	Adoption, Amendment, Repeal	58.7.	Recognition of Child Support Orders
58.3.	Definitions	58.8.	Discharge from Employment
58.4.	General	58.9.	Appeals
58.5.	Garnishment Action Procedure		

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58.1. Purpose and Policy

58.1-1. The purpose of this law is to exercise the authority of the Nation to provide an effective mechanism for creditors to access an employee’s income for reduction of personal debt.

58.1-2. It is the policy of the Nation to afford all individuals due process.

58.2. Adoption, Amendment, Repeal

58.2-1. This law is adopted by the Oneida Business Committee by resolution # BC-4-2-97-G and amended by resolution BC-06-25-14-B and _____.

58.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Oneida Legislative Procedures Act.

58.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

58.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provision of this law shall control.

58.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

58.3. Definitions

58.3-1. This section shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Accounting Department” means the area of the Nation charged with keeping the records of financial transactions and includes accounts payable and receivable, inventory, payroll, fixed assets and other financial elements.

(b) “Administrative Fee” means the fee assessed against the debtor each week the Accounting Department is responsible for processing the garnishment to cover the Accounting Department’s costs associated with implementing the garnishment.

(c) “Business Day” means Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays recognized by the Nation.

(d) “Creditor” means anyone who is awarded a money judgment which includes both Oneida entities and outside entities. Should the Nation be the creditor, a designee from the Oneida entity shall represent the claim of indebtedness.

(e) “Debtor” means the employee whom the judgment has been awarded against and/or whom owes a debt to the Nation.

(f) “Disposable Earnings” means the part of the debtor’s gross earnings for a pay period remaining after deductions required by state and federal law and for health insurance costs which is presumed to be thirty percent (30%) of the debtor’s gross earnings.

38 (g) “Earnings” means compensation payable in exchange for personal services and
39 includes, but is not limited to, wages, salaries, bonuses, commissions, expense
40 reimbursements, trade-back-for-cash benefits and/or final paychecks involving pay-out of
41 benefits.

42 (h) “Employee” means any individual hired by the Nation and on the Nation’s payroll
43 and encompasses all forms of employment, including but not limited to, full-time, part-
44 time, at-will, elected/appointed officials, political appointees and contracted persons.

45 (i) “Garnishment” means the legal process in which the earnings of the debtor are
46 required to be withheld by the Nation for a payment of a debt.

47 (j) “Garnishment Action Fee” means the fee paid to the Judiciary to cover the
48 administrative costs incurred during the garnishment proceedings.

49 (k) “Garnishment Hearing” means the time and location where the Judiciary hears
50 relevant evidence, determines the validity of the petition for garnishment and identifies
51 the amount of the garnishment order, if applicable.

52 (l) “Garnishment Order” means the order issued by the Judiciary which requires the
53 Nation to withhold an employee’s earnings in order to satisfy a creditor’s unpaid money
54 judgment or a debt owed to an entity of the Nation and includes any fees assessed against
55 the debtor.

56 (m) “Judge” means the member of the Judiciary assigned to hear the petition for
57 garnishment.

58 (n) “Judgment” means any judgment, decree, or order from a court of competent
59 jurisdiction, including, but not limited to, the Judiciary, which awards money to one or
60 more parties.

61 (o) “Judiciary” means the judicial system that was established by Oneida General Tribal
62 Council resolution GTC-01-07-13-B to administer the judicial authorities and
63 responsibilities of the Nation.

64 (p) “Nation” means the Oneida Nation.

65 (q) “Petition” means a formal written request to the Judiciary to hear a garnishment
66 matter.

67
68 **58.4. General**

69 58.4-1. *Jurisdiction.* By filing a petition, creditors are submitting to the jurisdiction of the
70 Nation for the subject action.

71 58.4-2. *Consumer Protection Act.* This law may be interpreted to allow the fullest protections
72 available to debtors by the federal Consumer Protection Act, 16 U.S.C. §1671, et seq., state laws
73 protecting debtors in child support orders, and other federal laws.

74
75 **58.5. Garnishment Action Procedure**

76 58.5-1. *Applicability.* This section applies to the collection of all debt through the garnishment
77 process except as provided in section 58-6.

78 58.5-2. *Judgment Required.* Except as provided in section 58-6, a judgment is required prior to
79 filing a garnishment petition.

80 58.5-3. *Filing Action.* In order to initiate a garnishment, the creditor shall file a petition with
81 the Judiciary. The creditor shall ensure that the petition identifies the creditor, the intended
82 debtor, any other interested parties, the reason for the claim, the name of the court that issued the

83 judgment, the amount awarded; the creditor shall also include a copy of the judgment the petition
84 is based upon.

85 (a) The Creditor shall pay the garnishment action fee before the Judiciary may consider
86 the petition complete.

87 (1) The Judiciary shall determine the amount of the garnishment action fee and
88 post notice of the fee amount at the Judiciary and on the Judiciary's webpage.

89 58.5-4. *Garnishment Hearing.* The Judiciary shall hold a garnishment hearing within sixty (60)
90 days of receiving the completed petition.

91 (a) The Judiciary shall provide written notice of the garnishment hearing to the creditor,
92 debtor and any other interested parties within ten (10) business days of receiving the
93 completed petition.

94 (b) The debtor may challenge the authenticity of the judgment document or the debt
95 owed to an Oneida entity at the garnishment hearing but he or she may not challenge the
96 validity of the judgment.

97 (c) A garnishment hearing may be used to resolve one (1) or more petitions for one (1) or
98 more debtors; however, the Judiciary shall hear and determine each petition separately.

99 (d) Throughout the garnishment proceedings, the parties may choose to represent
100 themselves or may be represented by an attorney or advocate. The Judiciary shall
101 provide all parties with an equal opportunity to present evidence at the garnishment
102 hearing.

103 58.5-5. *Final Decision.* The judge shall make the final decision regarding a garnishment order
104 within five (5) business days of the garnishment hearing. The judge shall provide written notice
105 of the final decision to all parties within ten (10) business days of his or her decision. If a
106 garnishment order is issued, the Judiciary shall include a copy of the garnishment order in the
107 written notice.

108 58.5-6. *Garnishment Orders.* Should the Judiciary issue a garnishment order, it is required to
109 include the following:

110 (a) *Administrative Fee.* An administrative fee which the Accounting Department shall
111 determine with notice of the fee amount provided to the Judiciary. The Judiciary shall
112 post notice of the administrative fee amount in the Judiciary and on the Judiciary's
113 webpage.

114 (b) *Garnishment Action Fee.* If the petition is submitted by the creditor, the judiciary
115 shall include the amount of the garnishment action fee originally paid by the creditor in
116 the garnishment order to reimburse the creditor for his or her costs to enforce the
117 judgment.

118 (c) *Garnishment Amount.* The judge shall begin with a presumption that a total of
119 twenty percent (20%) of a debtor's disposable earnings per pay period may be subject to
120 garnishment(s) at any one (1) time.

121 (1) In calculating the amount of the garnishment per pay period, the judge may
122 not include amounts garnished pursuant to child support orders when calculating
123 twenty percent (20%) of the debtor's disposable earnings.

124 (A) The debtor may request the Judiciary to lower the percentage
125 deducted from his or her disposable earnings if the he or she can show that
126 requiring a deduction of the maximum twenty percent (20%) would cause
127 him or her undue harm by demonstrating that one (1) or more of the
128 following apply:

- 129 (i) The debtor is subject to child support orders that would leave
130 him or her with less than fifty percent (50%) of his or her earnings;
131 (ii) The debtor receives, is eligible for or, within six (6) months
132 of the date the Judiciary received the completed petition, received
133 public assistance;
134 (iii) The debtor's household income is below the current federal
135 poverty level;
136 (iv) The garnishment of twenty percent (20%) of the debtor's
137 disposable earnings would cause the debtor's household income to
138 drop below the current federal poverty level; or
139 (v) The garnishment of twenty percent (20%) of the debtor's
140 disposable earnings would cause the debtor undue harm for
141 reasons not identified in this section.

142 (2) The debtor may request a higher percentage be deducted from his or her
143 disposable earnings. The debtor shall make such requests directly to the
144 Judiciary.

145 (3) Nothing in this law prohibits the debtor from making additional payments to
146 satisfy the garnishment order, provided that, if a creditor receives payments from
147 the debtor outside of the garnishment process, the creditor shall provide notice of
148 said payment to the Accounting Department with a copy to the debtor.

149 (d) *Post Judgment Interest.* The Judiciary shall include in the garnishment order a one
150 (1) time post judgment interest charge to judgment amount. The Judiciary shall
151 determine the post judgment interest rate by one (1) of the following means:

152 (1) An agreement by the parties to the garnishment as to a fair post judgment
153 interest rate; or

154 (2) A post judgment interest rate equal to one percent (1%) plus the prime rate in
155 effect on the date in which the judgment was awarded or the date of the final
156 notice of indebtedness with intent to garnish, as reported by the Federal Reserve
157 Board in federal reserve statistical release H. 15.

158 58.5-7. *Notice of Garnishment to Accounting Department.* The Judiciary shall provide the
159 Accounting Department with a copy of the garnishment order after the timeframe for all appeals
160 has been exhausted.

161 58.5-8. *Garnishment Implementation.* Within ten (10) business days of receiving a copy of the
162 garnishment order the Accounting Department shall implement the garnishment by deducting the
163 appropriate amount from the debtor's paycheck(s) and forwarding that amount to the creditor.
164 The Accounting Department shall notify the debtor and creditor when the garnishment order has
165 been fulfilled.

166 58.5-9. *Summary Process.* The Judiciary shall summarily process petitions when the debtor
167 owes fifty dollars (\$50) or less, unless the debtor formally requests a garnishment hearing. For
168 the purposes of this section, to summarily process a petition means a judge may make a
169 determination regarding the garnishment order without holding a garnishment hearing.

170 58.5-10. *Records.* The Judiciary shall keep records of all garnishment actions it hears and shall
171 ensure such records include the following:

- 172 (a) Correspondence and notices to all parties involved;
173 (b) Bookkeeping records;
174 (c) Garnishment evidence presented by all parties; and
175 (d) Decisions made by the Judge.

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58.6. Garnishment to Collect Debt Owed to the Nation

58.6-1. *No Judgment or Garnishment Order Required.* Oneida entities, which for the purposes of this section include its chartered corporations, are not subject to the garnishment process requirements contained in section 58.5 unless a garnishment hearing is requested under section 58.6-7. In all other circumstances, Oneida entities do not require a judgment or a garnishment order in order to garnish an employee’s earnings to collect debt owed to the Nation.

58.6-2. *Notice of Indebtedness.* Prior to initiating a garnishment, the entity owed the debt shall provide written notice of indebtedness to the debtor by first (1st) class mail.

(a) *Frequency of Notice.* Entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for garnishment.

(b) *Notice Content.* Entities shall include the following in their notices of indebtedness:

- (1) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;
- (2) The amount of the debtor’s indebtedness;
- (3) Information for making payment on the debt; and
- (4) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic garnishment of the debtor’s earnings.

58.6-3. *Initiating a Garnishment.* After thirty (30) calendar days have lapsed since the entity sent the second consecutive monthly notice of indebtedness, the entity may initiate a garnishment by providing the debtor with a final notice of indebtedness with intent to garnish. The entity shall send the final notice to the debtor by certified mail and shall provide a copy to the Accounting Department. Additionally, the entity shall post notice of intent to garnish in the Nation’s newspaper, where such notice includes only the debtor’s name, the Oneida entity owed a debt and the Oneida entity’s contact information for payment. The entity shall submit its request to post to the newspaper at the same time the final notice with intent to garnish is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor’s thirty (30) calendar day time period to resolve the debt or request a garnishment hearing. The entity shall include the following in the final notice of indebtedness with intent to garnish:

- (a) The dates of all prior notices of indebtedness provided to the debtor;
- (b) The amount of the debtor’s indebtedness;
- (c) Information for making payment on the debt;
- (d) An explanation that this is the final notice and the entity has by this final notice initiated a garnishment against the debtor;
- (e) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to garnish that the Accounting Department will automatically begin garnishing the debtor’s earnings until the debt is satisfied in full;
- (f) That the garnishment amount that may be deducted from the debtor’s earnings each week consists of an administrative fee, the payment of the debt each to a maximum of twenty percent (20%) of the debtor’s disposable earnings and an interest charge; and
- (g) An explanation that the debtor may negotiate a reduced weekly garnishment amount with the entity, excluding the administrative fee which is not negotiable, and may request

223 that a higher percentage than what is required under section 58.6-4(a)(2) be deducted
224 weekly. Provided that, if an agreement is not reached and noticed to the Accounting
225 Department within thirty (30) calendar days from the date of the of the final notice of
226 indebtedness, the Accounting Department shall proceed with the garnishment amount
227 provided in the notice; and

228 (h) An explanation that the debtor may request a garnishment hearing with the Judiciary
229 to contest the validity of the debt or request a reduced garnishment amount, by submitting
230 a petition to the Judiciary within thirty (30) calendar days from the date of the of the final
231 notice of indebtedness with intent to garnish and that the debtor is responsible for the
232 Judiciary's garnishment action fee.

233 58.6-4. *Accounting Department Responsibilities.*

234 (a) *Calculating the Garnishment Amount.* The Accounting Department shall include the
235 following in its calculation of the weekly garnishment amount.

236 (1) The administrative fee to be assessed against the debtor each pay period until
237 the debt is paid in full. The Accounting Department shall use the same
238 administrative fee that is noticed in the Judiciary and on the Judiciary's website as
239 required in section 58.5-6(a).

240 (2) The amount of the garnishment attributable to payment of the debt that is
241 equal to twenty percent (20%) of the debtor's disposable earnings per pay period.

242 (A) If the Accounting Department is currently processing any other
243 garnishments for the same debtor, it shall adjust this amount so that no
244 more than twenty percent (20%) of the debtor's disposable income is
245 subject to garnishment at any one (1) time.

246 (B) In calculating the amount of the garnishment per pay period, the
247 Accounting Department may not include amounts garnished pursuant to
248 child support orders when calculating twenty percent (20%) of the
249 debtor's disposable earnings.

250 (3) *Interest.* The Accounting Department shall include in the garnishment
251 amount a one (1) time interest charge to the original amount of the debt. Unless
252 otherwise agreed by the creditor and the debtor, the Accounting Department shall
253 apply the interest using a rate equal to one percent (1%) plus the prime rate in
254 effect on the date of the final notice of indebtedness with intent to garnish, as
255 reported by the Federal Reserve Board in federal reserve statistical release H. 15.

256 (b) *Garnishment Implementation.* Within ten (10) business days of either the close of the
257 debtor's thirty (30) calendar day time period to resolve the debt or request a garnishment
258 hearing or receipt of an alternate garnishment agreement, the Accounting Department
259 shall implement the garnishment by deducting the appropriate amount from the debtor's
260 paycheck(s) and forwarding that amount to the creditor. The Accounting Department
261 shall notify the debtor and creditor when the debt has been fully satisfied and the
262 garnishment is complete.

263 (c) *Records.* The Accounting Department shall keep records of all garnishments
264 enforced on behalf of Oneida entities, and shall ensure that such records include the
265 following:

- 266 (1) Copies of all final notices with intent to garnish sent to debtors; and
267 (2) Bookkeeping records.

268 58.6-5. *Negotiating an Alternate Garnishment Agreement.* It is within the entities' discretion to
269 negotiate an alternate garnishment agreement that would reduce the weekly garnishment amount.

270 Such negotiations may include a reduced interest rate and/or a reduced amount of the weekly
271 garnishment attributable to payment of the debt.

272 (a) In the event of that the entity and the debtor reach an agreement, the entity shall
273 immediately forward the agreement to the Accounting Department and provide a copy to
274 the debtor.

275 (b) If an agreement is not reached and noticed to the Accounting Department within
276 thirty (30) calendar days from the date of the of the final notice of indebtedness, the
277 Accounting Department shall proceed with the garnishment amount provided in the final
278 notice with intent to garnish.

279 (c) The garnishment amount attributable to payment of the debt may be amended at any
280 time if agreed to by the entity and the debtor.

281 58.6-6. *Payments in Excess of the Required Garnishment Amount.* A debtor may at any time
282 make payments in excess of the required garnishment amount as noticed to them in the final
283 notice of indebtedness with intent to garnish.

284 (a) The debtor may request a higher percentage be deducted from his or her disposable
285 earnings. Debtors shall make such requests directly to the Accounting Department.

286 (b) Nothing in this law prohibits the debtor from making additional payments to satisfy
287 the garnishment order, provided that, if an entity receives payments from the debtor
288 outside of the garnishment process, the entity shall provide notice of said payment to the
289 Accounting Department with a copy to the debtor.

290 58.6-7. *Requesting a Garnishment Hearing.* A debtor may request a garnishment hearing with
291 the Judiciary to contest the validity of the debt or request a reduced garnishment amount by
292 submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the
293 final notice of indebtedness with intent to garnish.

294 (a) The debtor shall ensure that the petition identifies the creditor, the debtor, any other
295 interested parties, and the reason for requesting the garnishment hearing; the debtor shall
296 also include a copy of the final notice of indebtedness with intent to garnish.

297 (b) The debtor shall pay the garnishment action fee before the Judiciary may consider the
298 petition complete.

299 (c) When a request for a garnishment hearing is timely made, the garnishment process
300 contained in sections 58.5-4 through 58.5-10 controls. In such circumstances, the entity
301 is still not required to obtain a judgment, but shall receive a garnishment order prior to
302 garnishing.

303

304 **58.7. Recognition of Child Support Orders**

305 58.7-1. *Recognition and Enforcement of Child Support Orders.* The Judiciary shall recognize
306 and enforce child support orders against any employee, provided that the order has been issued
307 from a court of competent jurisdiction.

308 58.7-2. *Authenticity of Order.* Parties seeking to garnish based on a child support order shall
309 submit the order to the Judiciary, which shall verify the order's authenticity. Upon verification
310 of the child support order, the judge shall forward such order to the Accounting Department for
311 action.

312 58.7-3. *Administrative Fee.* An administrative fee is required to be assessed monthly so long
313 as the child support deduction is in effect.

314

315 **58.8. Discharge from Employment**

316 58.8-1. The Nation may not discharge from employment, refuse to employ or otherwise take
317 disciplinary action against an employee solely because the employee is subject to a garnishment
318 action.

319

320 **58.9. Appeals**

321 58.9-1. A party may appeal a garnishment action with the Judiciary's Court of Appeals in
322 accordance with the Judiciary Law and any applicable rules and procedures.

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324

325 *End.*

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327 Adopted - BC-6-2-92

328 Adopted - BC-6-10-92

329 Adopted - BC-4-2-97-G

330 Amended - BC-06-25-14-B